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For

The Committee on House Administration Elections Subcommittee

Expanding and Improving Opportunities to Vote by Mail or Absentee

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Madame Chairwoman, Mr. Ranking Member and Members of the House Administration Committee Subcommittee on elections. I am pleased to submit testimony on several bills before you on the subject of absentee voting.

Voting before election day has become increasingly common in America. In 2004, nearly one quarter of all voters voted before November 2nd, with the majority of those voters casting their votes by absentee ballot.

Access to absentee ballots is essential for several classes of people who really need them, overseas military voters, the bedridden, and travelers, to name a few. But many states have encouraged the use of absentee voting for those who could otherwise go to the polls. I would like to sound a cautionary note regarding this trend. Casting an absentee ballot, while necessary for some, is inferior to casting a vote at a polling place for two major reasons.

First, at a polling place, a voter casts a private ballot. By contrast, there is no privacy curtain around an absentee ballot; it has left the protections of the polling place behind. Without privacy protections, absentee voters are susceptible to coercion of their votes. If a voter at a polling place has been pressured by his employer, union, church, community or spouse, he can draw the curtain, vote privately, and thumb his nose at the pressure. With an absentee ballot, voters might not have a choice but to show the filled out ballot to their tormentors or to receive fifty dollars for a ballot “well filled out.”

Second, absentee ballots provide greater opportunities for election fraud. Election fraud is very hard to measure, and there are numerous points in the voting process where fraud could occur. But absentee voting opens up additional opportunities for election fraud. Absentee ballots have been fraudulently requested or intercepted in the mail, for example. The most famous instance of absentee voter fraud occurred in the Miami mayoral race in 1998. A court found such irregularities in the absentee ballots, that all absentee ballots were thrown out, which changed the outcome of the election.

There are two additional reasons to be cautious about the expansion of absentee ballot beyond those who need it. First, absentee ballots are not subject to the same error checking as most ballots cast at polling places. There is no solid body of academic research on error rates of absentee ballots compared to ballots cast at a polling place. But there is the simple fact that voters who vote on Optiscan or DRE voting machines will be warned if they have not cast a ballot for a particular race, or they will be warned or prevented from voting for two candidates and thereby invalidating their ballot. Absentee voters have no such check against ballot errors. If an absentee voter, for example, inadvertently votes for two candidates, then that vote cannot be counted. A Cal Tech/MIT study after the 2000 election found that several million ballots for president were invalidated because they had been cast improperly, and subsequently added error checking mechanisms have reduced that number substantially.

Second, absentee balloting extends the voting period from one day to over a month. Not only does this dilute the civic spirit of a single election day, it also opens up the

possibility that the voter will cast a ballot before important information becomes available. A vote cast in advance for a candidate who makes a last minute gaffe cannot be retrieved. In many instances, absentee ballots are available to be cast before candidate debates are complete.

The advocates of increased absentee balloting put forth two positive reasons in its favor. First, absentee voting is convenient. Second, the convenience of absentee balloting leads to higher voter turnout.

In Oregon, where elections are conducted by mail, surveys have shown that voters like the convenience of the system. They are happy with the system and do not want to change it. But voters also like other convenience measures that are the competitors to absentee voting. Texas, for example, has a very high percentage of voters casting their ballots before Election Day, but at early polling places, not through the mail. And Texas voters are also happy with their convenience system. Voters do like convenience, but they like many forms of convenience.

On the question of turnout, the promise of absentee balloting leading to higher turnout has not been borne out. The assumption has been that if you remove the obstacles to voting, they will come (and vote). But extensive academic research has shown little or no positive effect from increased absentee voting or voting by mail. The one exception to these findings is that in very low turnout local elections, voting by mail does have a significant positive effect. But in statewide election or federal elections, various studies

have found a minimal effect. And to the extent that some studies have shown a small positive effect, the increase in turnout is not due to the attraction of new voters, but from a slightly higher rate of voting from those who habitually vote. The Oregon experience with all mail balloting has shown that the same voters who once went to the polls, now vote from their kitchen tables. Vote by mail has not changed who makes up the electorate, but only how they vote. Oregon election officials have often pointed to its high voter turnout as evidence of the virtues of voting by mail, but Oregon had high turnout before it instituted vote by mail.

Absentee Ballots: Where We Are and How We Got There?

The first major episode of absentee balloting was during the Civil War, where soldiers in the field were able to cast ballots in the 1864 election. But after the war ended, it was not until the early part of the twentieth century that states began to introduce absentee ballots to civilians. An increasingly mobile population, traversing a vast country led states to adopt modest amounts of absentee voting for particular classes of people. States extended absentee ballots to railroad workers, government employees out of state, military voters away from home, and the sick and elderly. This revolution in voting occurred state by state, but by World War II, nearly every state had adopted some form of absentee voting.

The reformers who advocated for absentee voting saw it as a good because it extended the franchise to those who could not get to local polling places on Election Day. But

these reformers also knew that absentee balloting was in conflict with another recently adopted reform, the secret ballot. In the late nineteenth century, states began to adopt the secret or “Australian ballot.” These reforms consisted of a standard ballot printed by government and cast at a polling place where the voter could vote in private. The reforms were instituted to combat election fraud perpetrated by big city political machines. Before the adoption of these reforms, parties would often print up color coded ballots that voters could bring to the polls. The ballots were publicly placed in a box, so that everyone was aware if the voter had voted the proper party line. Those holding patronage jobs were expected to vote for their benefactors. Money was paid for correctly cast ballots. Punishments were meted out to renegade voters.

Within a twenty year period at the end of the 19th century, all of the states had adopted the secret ballot, and by most accounts, this reform was successful in weeding out the coercion at the polling place.

When reformers in the early twentieth century advocated for the introduction of the absentee ballot, the issue of the secret ballot was fresh in their minds. There were many legislative and state constitutional battles over whether absentee voting was constitutional, as many states had guaranteed the privacy of the vote in their constitutions. To balance the goods of privacy of the vote and offering absentee ballots to those who needed it, reformers instituted absentee ballot protections. Absentee ballots were only offered to particular classes of people who provided reasons why they needed such ballots, and procedures that preserved a degree of privacy for such ballots were

instituted. The most common set of procedures was for a voter to bring his or her blank absentee ballot to a notary public, showing that the ballot had not been cast. The voter then was to fill out the ballot so that the notary public could see that no one else was filling the ballot out for them or that no one was coercing their vote. The voter would seal the ballot in an envelope, and the notary public would indicate that the ballot had been filled out properly.

Until thirty years ago, most states had requirements like this on the books. And a few states still require witnesses or notaries in filling out absentee ballots. With this system in place, roughly five percent of voters cast their ballots by absentee. But in the 1970s, a number of states, particularly in the West, began to loosen the restrictions on casting an absentee ballot, or even actively encouraging the casting of absentee ballots. The result has been an explosion of absentee voting. Nearly 15% of Americans cast a ballot by mail in the 2004 election, and an additional 8% voted before Election Day at early polling places.

These numbers do not tell the whole story, for the rise in absentee ballots has been even more dramatic even particular states. Many northeastern, midwestern and southern states have very modest amounts of absentee voting that resembles the prevailing rate of absentee voting thirty years ago. But in the last presidential election, Oregon voted 100% by mail, Washington State almost 70%, and Arizona, California and Iowa over 30%. There are also states that have heavy early voting. Texas and Tennessee had nearly half of their voters cast votes early at polling places. Some states have a mix of

both practices. Nevada, Colorado, and New Mexico had over 45% of their voters cast ballots before Election Day, either by mail or at early polling places.

For a more detailed history and statistics about absentee and early voting, see John C. Fortier, *Absentee and Early Voting: Trends, Promises, and Perils* (AEI Press, 2006), pp. 7-39.

Conclusions about H.R. 281, H.R. 1646, and H.R. 1667

H.R. 281 and H.R. 1667 promote absentee voting. H.R. 281 requires that states adopt “no excuses” absentee voting, allowing them to cast an absentee ballot for any reason. H.R. 1667 promotes the adoption of vote-by-mail elections through a grant program to local jurisdictions. H.R. 1646 requires that states carefully track absentee ballots at each stage of the voting process. I will treat H.R. 281 and 1667 together and then return to H.R. 1646.

Advice to States on Absentee Voting

If I were testifying before a state legislature, I would urge caution in expanding absentee and vote by mail programs for many of the reasons stated above. Absentee and mail voting is convenient and liked by many voters, but it comes with a cost, especially the loss of the privacy of the ballot and additional opportunities for voter fraud. I would also

note that states have many options to improve the convenience of elections that do not involve expanding mail or absentee ballots.

First, I would recommend that states significantly improve the convenience of voting on Election Day. I would recommend longer voting hours, better poll worker training, better siting of more accessible polling places. States might also consider adopting Election Day vote centers or super centers as several counties in Colorado have tried. These vote centers allow voters to cast ballots at any location in their county, not just their home polling places. Early academic research has shown that these vote centers do increase turnout and attract new voters to the process.

Second, I would recommend to states that have not already done so to explore a period of early voting at polling place locations. This would contribute to the convenience of the voting process, while retaining the protections of the polling place. Many states that have adopted early voting at polling places allow such voting two to three week in advance of the election. Even a week of such voting would provide significant convenience to voters, but would not substantially lengthen the period of voting. Absentee voting, on the other hand, allows for voters to cast their ballots many weeks before Election Day.

With these forms of convenience voting available to voters, there would only be a small percentage of voters who would need absentee ballots.

Advice to Congress on Absentee Voting

Practice with respect to absentee, mail, and early polling place voting differs significantly from state to state. While expanded absentee and mail voting has been the choice of a number of states, I would urge Congress not to impose this choice on other states. Some states have clearly chosen the early polling place model as a form of convenience voting. Others have little voting before Election Day, but might want to adopt Election Day Vote Centers or early polling place voting in the future. Both the “no excuses” absentee mandate in H.R. 281 and the grant program in H.R. 1667 would have Congress weigh in and make this choice for states. It may well be that most states will adopt the mail and absentee voting model, but early polling place voting is growing rapidly as well, and it would be a mistake for Congress to take one side or the other.

H.R. 1646

H.R. 1646 would improve the practice of absentee balloting in America. No matter what your position is on “no excuses” absentee balloting or mail balloting, there is no question that there will be absentee voting in every state for those who cannot vote at polling places, and there will be substantially more absentee voters in states that encourage the practice.

Given the large numbers of voters casting absentee ballots, it is important for states to track and professionalize the administration of such ballots. While I am in many ways a critic of Oregon’s vote by mail system, I recognize that Oregon does take the process of

casting a vote by mail seriously. Unlike many states, Oregon checks a signature on each absentee ballot received. It also has an organized system for tracking ballots. H.R. 1646 is of special importance to states which have recently expanded their percentage of ballots cast absentee. A simple message is: if you are going to rely heavily on absentee ballots, you need to upgrade your system of casting, tracking and counting such ballots.

The details of H.R. 1646 will need to be considered carefully. It may not be possible for states to have all aspects of the proposed tracking system by 2010, but the general thrust of the legislation is clearly in the right direction.